



Billing Code 4310-WV

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024-AD88

Special Regulations; Areas of the National Park System, Cape Cod National Seashore

AGENCY: National Park Service, Interior

ACTION: Final rule.

SUMMARY: The National Park Service is amending special regulations for Cape Cod National Seashore that authorize hunting to allow for a spring season hunt for Eastern Wild Turkey. The Final Rule implements the Record of Decision for the Cape Cod National Seashore Hunting Program Environmental Impact Statement of August 2007.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Craig Thatcher, Acting Chief Ranger, 99 Marconi Site Road, Wellfleet, MA 02667; 508-957-0735.

SUPPLEMENTARY INFORMATION:

Description of the Park Area

In 1961 Congress established Cape Cod National Seashore (Seashore). In establishing the Seashore, Congress directed that the unique flora and fauna, the physiographic conditions, and the historic sites and structures of the area be permanently preserved; authorized the Secretary of the Interior (Secretary) to provide for the public

enjoyment and understanding of the unique natural, historic, and scientific features of the Seashore be facilitated by establishing trails, observation points, exhibits and services for the public, and provided that adaptable portions of the Seashore may be managed for camping, swimming, boating, sailing, hunting, fishing, and other activities of similar nature. Pub. L. 87-126, Sec. 7 (Aug. 7, 1961).

The Seashore comprises 43,608 acres of shoreline; salt marshes; clear, deep, freshwater kettle ponds; and uplands; as well as a great diversity of species supported by these habitats. Lighthouses, a life-saving station, dune shacks, modern and Cape Cod-style houses, cultural landscapes, and wild cranberry bogs provide a glimpse into Cape Cod's past and continuing life ways. The Seashore offers six swimming beaches, eleven self-guiding nature trails, and a variety of picnic areas and scenic overlooks.

Background

The 1961 legislation establishing the Seashore authorized the Secretary, acting through the National Park Service (NPS), to permit hunting.

The Secretary may permit hunting and fishing, including shellfishing, on lands and waters under his jurisdiction within the seashore in such areas and under such regulations as he may prescribe during open seasons prescribed by applicable local, State and Federal law. The Secretary shall consult with officials of the Commonwealth of Massachusetts and any political subdivision thereof who have jurisdiction of hunting and fishing, including shellfishing, prior to the issuance of any such regulations, and the Secretary is authorized to enter into cooperative arrangements with such officials regarding such hunting and fishing, including shellfishing, as he may deem desirable

16 U.S.C. 459b-6(c).

The final rule increases hunting opportunities by expanding the hunting season to include a spring turkey hunt. Hunting within the Seashore that is authorized by NPS regulations is conducted in accordance with Commonwealth of Massachusetts,

Department of Fisheries and Wildlife (MDFW) regulations. Currently authorized hunting in the Seashore is limited to deer, upland game, and migratory waterfowl. Although the Eastern Wild Turkey is managed as a native upland game bird by the MDFW, the current special regulation for hunting within the Seashore prohibits all hunting from March 1 through August 31. This rule change is necessary because the Massachusetts spring turkey season generally takes place from late April to mid or late May when hunting is prohibited by the Seashore's current special regulation. Fall turkey hunting could also be initiated if MDFW established such a season in the Cape Cod zone, but no rule change would be needed for a fall turkey hunt since the State does not conduct hunting before September 1.

For many years, the Seashore cooperated with the MDFW to release ring-necked pheasants within the Seashore to provide a pheasant hunt. In 2002, the Seashore was sued for failure to follow the National Environmental Policy Act (NEPA) with respect to the hunting program. In September 2003, the U.S. District Court ordered the Seashore to prepare a NEPA environmental assessment of the hunting program. The court also enjoined the pheasant hunt until the Seashore completed the NEPA assessment.

National Environmental Policy Act Process

As a result of the court order, the Seashore initiated and completed a Final Environmental Impact Statement (FEIS), and Record of Decision (ROD), on the Seashore's hunting program. The chosen alternative as documented by the ROD, was Alternative B—**Develop a Modified Hunting Program.**

Through Alternative B, the Seashore seeks to increase hunting opportunities for native upland game bird species by establishing a turkey season generally consistent with

MDFW regulations and making ancillary improvements to upland game bird habitat. The alternative phases out pheasant stocking and hunting through adaptive management actions aimed at improving the availability of native upland game bird species. Hunting areas will be consolidated and clearly delineated and educational outreach concerning hunting will be expanded to hunting and non-hunting users. The NPS and MDFW will cooperatively monitor and manage game and other species. The FEIS and ROD may be reviewed at:

<http://www.nps.gov/caco/parkmgmt/planning.htm>

SUMMARY OF AND RESPONSES TO PUBLIC COMMENTS

The NPS published a proposed rule on March 22, 2011, and accepted public comments through April 21, 2011. Comments were accepted through the mail, hand delivery, and through the Federal eRulemaking Portal: *<http://www.regulations.gov>*. A total of eleven comments were received during the comment period. Ten comments supported the establishment of the spring turkey season within the Seashore. One comment was not responsive to the proposed rule, but contained strong, general anti-hunting sentiment.

Seven comments were received from individuals. Of these, two came from the same person. Two of the remaining individual comments were very similar in context and point, but did not contain the name(s) of the person(s) that sent them.

Three comments were received from organizations: the Cranberry County Longbeards Chapter of the National Wild Turkey Federation; the Barnstable County League of Sportsman's Clubs, Inc.; and the Bass River Rod and Gun Club, Inc. One comment was from the agency that manages hunting in Massachusetts, the MDFW.

Two individual comments expressed general support for establishing a spring turkey season at the Seashore that was consistent with the MDFW program, but also recognized that the Seashore season and the State season were separately managed. Two individual comments supported the spring turkey season based on reducing motor vehicle and turkey conflicts on Route 6, a well travelled State highway that runs through the Seashore.

The comments received from the three organizations supported establishing a spring turkey season at the Seashore. These comments also suggested there should be:

- consistency between the Seashore and MDFW regulations,
- a youth turkey hunt similar to the State youth hunt,
- flexibility in the rule for the Seashore to adjust to any changes MDFW makes with the spring turkey season, and
- no extra geographic restraints in the Seashore spring turkey season that might create a high hunter density.

The MDFW made similar suggestions and also expressed concern about the possible need for a hunter to have a permit issued by the Seashore in addition to their State hunting license and turkey stamp.

Analysis and Response

The Seashore's hunting FEIS evaluated a turkey hunting season that was consistent with the MDFW regulations. The Seashore's hunting program has generally followed the MDFW program, with additional provisions or restrictions as necessary to meet park objectives and NPS policies. The Seashore regards MDFW as a key expert agency with State and region-wide perspective that is important for determining hunting

seasons, bag limits, and other elements of a sound hunting program. Accordingly, management of hunting at the Seashore will be accomplished through close coordination between the Seashore and MDFW. The Seashore has adopted many of the MDFW regulations without additional restrictions, although the ultimate responsibility for developing and managing an appropriate hunting program for the Seashore rests with the NPS.

The existing special regulation utilizes 36 CFR 1.5, Closures and public use limits, to designate appropriate locations where hunting is allowed and to impose reasonable limits or restrictions necessary to address park specific issues such as resource protection, public safety and other visitor use concerns. While the general authority of § 1.5 remains available as an alternative closure authority, the new § 7.67 (f)(5) creates Seashore-specific discretionary authority for the Superintendent, consistent with the public notice requirement of 36 CFR 1.7, to require permits where appropriate and to ensure that potential park specific concerns or conflicts, such as resource protection, visitor use, and public safety, can be addressed should they arise. Section 1.7 describes four alternative methods of notifying the public: signs; maps; newspaper publication; and electronic media, brochures, or hand-outs. In addition, the Superintendent must annually compile all park closures and restrictions into a document generally referred to as the Superintendent's Compendium, which is available to the public on the Seashore's website at <http://www.nps.gov/caco>. Although, closures under the new § 7.67(f)(5)(ii) are "temporary" insofar as they must be annually re-evaluated and renewed by the Superintendent, they may be renewed each year whenever appropriate. In order to clarify this point, and because the requirement for annual review already exists in 36 CFR 1.7,

NPS has deleted the word “temporarily” from § 7.67(f)(5)(ii) in this final rule. This closure authority will allow for such closures to remain flexible in light of changes in visitor use, public safety, wildlife resource impacts, or other changed or unanticipated conditions. Hunters are urged to consult with the Seashore each season to ascertain whether or not there are any changes from the prior year.

For similar reasons, NPS has deleted the reference to management activities and objectives “such as those described in the Cape Cod National Seashore Hunting Program/Final Environmental Impact Statement” from § 7.67(f)(5)(ii) in this final rule. Although the FEIS will continue to be an important guiding document, the Seashore will gain knowledge and experience each season that will inform the ongoing management process, and accordingly some flexibility is necessary.

For example, when the FEIS (July 2007) and ROD (September 2007), were completed, the MDFW had a two-week spring turkey hunting season, starting at the end of April and ending in early May. The FEIS and ROD statements of being “consistent with” the State season and expanding the Seashore’s hunting season to accommodate the State’s spring turkey hunt was written in the context of the two-week season. Since that date, the State has expanded its spring turkey season from two to four weeks, ending in late May. Due to possible user conflicts that may arise in late May, the Seashore Superintendent, using discretionary authority of the rule, will set the closing date of the season. The Seashore will strive to be consistent with the MDFW’s turkey season dates to avoid confusion. However, the Superintendent will have the discretion to adjust the Seashore’s opening and closings dates based on factors such as safety, use patterns, and the public interest.

To authorize and manage hunting activities compatible with their land management concerns, other federal and Commonwealth facilities within Massachusetts, such as the Massachusetts Military Reservation, have different rules and different dates than the dates/times established by the MDFW. The Superintendent's discretion in this case would be similar to such established practice. The public will be notified of the spring turkey hunt opening and closing dates and other special conditions for the Seashore hunting program, all of which will also be published in the Superintendent's Compendium.

Affording the Seashore Superintendent this discretion provides the flexibility suggested by the three organizations and the MDFW to allow for accommodation of future changes in the State's program (provided the changes fall within the scope of discretion authorized by this regulation) without further rulemaking. For example, MDFW currently has a special youth turkey hunt, which is allowed on a specific day, as part of its spring turkey season. The Seashore may consider, and this rulemaking accommodates, the possibility of incorporating a youth turkey hunt into the Seashore's program in the future. Consideration of the youth turkey hunt component may be entertained after the Seashore has implemented and evaluated the regular spring turkey hunt.

The ROD directed that: "[t]urkey hunting within [the Seashore] will be a controlled hunt requiring a permit, limiting the number of hunters, and likely managed through a lottery system." Accordingly, to control issues such as hunter density for safety, this rule provides that the Seashore will manage the turkey hunt through permits. A person seeking the turkey hunting permit must present a driver's license, vehicle registration and

Massachusetts State Hunting license with turkey stamp to ensure compliance with MDFW turkey hunt legal requirements and to verify the identity of the applicant.

Seashore hunters should understand that some areas where hunting has previously been allowed might be closed to hunting during the spring turkey season for safety reasons.

Changes from the Proposed Rule

After review and analysis of the public comments, NPS has:

- deleted the word “temporarily” in paragraph (f)(5)(ii), for the reasons discussed in the previous section;
- deleted the reference to activities and objectives “such as those described in the Cape Cod National Seashore Hunting Program/Final Environmental Impact Statement” in paragraph (f)(5)(ii), for the reasons discussed in the previous section; and
- added the terms “limitations, restrictions . . . or other hunting related designations” to the public notification requirements for closures in paragraph (f)(6) to clarify that the requirement applies to all such actions.

COMPLIANCE WITH OTHER LAWS and EXECUTIVE ORDERS

Regulatory Planning and Review (Executive Order 12866).

This document is not a significant rule and the Office of Management and Budget has not reviewed this rule under Executive Order 12866.

(1) This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This is an agency specific rule.

(3) This rule does not alter the budgetary effects of entitlements, grants, user-fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues. The rule meets the requirements of the NPS general regulations at 36 CFR 2.2 (b)(2).

Regulatory Flexibility Act (RFA).

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*).

Small Business Regulatory Enforcement Fairness Act (SBREFA).

This rule is not a major rule under 5 U.S.C. 804 (2), the SBREFA. This rule:

a. Does not have an annual effect on the economy of \$100 million or more. The rule will benefit small businesses in the local communities through the sale of goods and services to turkey hunters.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The rule will not impose restrictions on business in the local communities in the form of fees, record keeping or other requirements that would increase costs.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (UMRA).

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required

Takings (Executive Order 12630).

Under the criteria in Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required.

Federalism (Executive Order 13132).

Under the criteria in Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. A Federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988).

This rule complies with the requirements of Executive Order 12988. Specifically this rule:

(a) Meets the requirements of section 3(a) requiring all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation with Indian tribes (Executive Order 13175).

Under the criteria in Executive Order 13175 we have evaluated this rule and determined that it has no potential effects on federally recognized Indian tribes.

Paperwork Reduction Act (PRA).

This rule does not contain any new collection of information that requires approval by OMB under the PRA of 1995 (44 U.S.C. 3501 *et seq.*). OMB has approved the information collection requirements associated with NPS special use permits and has assigned OMB control number 1024-0026 (expires 06/30/2013). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA).

This rule implements a portion of a major Federal action significantly affecting the quality of the human environment. The Seashore formally initiated the NEPA process on June 21, 2004 by publishing in the *Federal Register* a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) on the Seashore Hunting Program.

A series of public and agency scoping meetings followed to solicit input on hunting in the park from American Indian tribes, Federal and State agencies and local towns, the public, and interested groups. Using the information gathered during the scoping process, the Seashore prepared a Draft Environmental Impact Statement (Draft EIS) for public review and comment. The comment period opened on April 21, 2006, with the Environmental Protection Agency's (EPA) publication of a Notice of Availability (NOA) in the *Federal Register*, and closed 60 days later, on June 19, 2006.

Two public meetings were held during the 60-day review period to receive oral comment. The availability of the Draft EIS and the dates and times of the public meetings were also publicized through a second NOA published by the NPS in the *Federal Register* on May 10, 2006, and through press releases sent to local newspapers and radio

stations. Over 200 comments were received on the Draft EIS. These comments were used to improve the Draft and produce the FEIS.

Completion of the FEIS was noticed in the *Federal Register* by the DOI and EPA on August 7 and August 10, 2007, respectively. The ROD was signed on September 18, 2007. The chosen alternative was Alternative B—Develop a Modified Hunting Program. The FEIS and ROD may be reviewed at:

<http://www.nps.gov/caco/parkmgmt/planning.htm>

Effects on the Energy Supply (Executive Order 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A statement of Energy Effects is not required.

Drafting Information:

The primary authors of this regulation were Craig Thatcher, Acting Chief Ranger, Cape Cod National Seashore; Robin Lepore, Office of the Regional Solicitor, Department of the Interior; Russel J. Wilson, Chief Regulations and Special Park Uses, National Park Service; and, A.J. North, Regulations Coordinator, National Park Service.

List of Subjects in 36 CFR Part 7

National Parks, Reporting and recordkeeping requirements

For the reasons stated in the preamble, the National Park Service amends 36 CFR Part 7 as follows:

PART 7 -- SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k); Sec. 7.96 also issued under 36 U.S.C. 501-511, D.C. Code 10-137 (2001) and D.C. Code 50-2201 (2001).

2. Revise § 7.67(f) to read as follows:

§ 7.67 Cape Cod National Seashore.

* * * * *

(f) Hunting. (1) Hunting is allowed at times and locations designated by the Superintendent as open to hunting.

(2) Except as otherwise provided in this section, hunting is permitted in accordance with § 2.2 of this chapter.

(3) Only deer, upland game (including Eastern Wild Turkey), and migratory waterfowl may be hunted.

(4) Hunting is prohibited from March 1st through August 31st each year, except for the taking of Eastern Wild Turkey as designated by the Superintendent.

(5) The Superintendent may:

(i) Require permits and establish conditions for hunting; and

(ii) Limit, restrict, or terminate hunting access or activities after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

(6) The public will be notified of such limitations, restrictions, closures, or other hunting related designations through one or more methods listed in § 1.7(a) of this chapter.

(7) Violating a closure, designation, use or activity restriction or a term or condition of a permit is prohibited. Violating a term or condition of a permit may result in the suspension or revocation of the permit by the Superintendent.

Rachel Jacobson

Acting Assistant Secretary for Fish and Wildlife and Parks

February 10, 2012

Date

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